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REPORT TO

THE GOVERNOR AND LEGISLATURE

FOR

FISCAL YEAR 1979

Prepared and Published by

Commissioner of Campaign Finances and Practices

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The Big Sky Country

COMMISSIONER OF CAMPAIGN FINANCES AND PRACTICES

JOHN N. HANSON
COMMISSIONER
CAPITOL STATION
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July, 1979

To the Governor, Legislature, and Citizens of the State of Montana:

Contained herein is a report to the Governor, the Legislature, and the Citizens of the State of Montana detailing the activities of the Office of Commissioner of Campaign Finances and Practices during the preceding fiscal year. This report, covering the period July 1978 through June 1979, is compiled and published pursuant to the provisions of Section 13-37-120, MCA; and is submitted for your consideration.

Additional information and all records maintained pursuant to the provisions of the Campaign Practices Act (Title 13, Chapters 35, 36, and 37, MCA) may be obtained by contacting the Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, or calling (406) 449-2942.

Respectfully,

John N. Hanson

JOHN N. HANSON
Commissioner

Budget Data

Appropriations by the 45th Legislature for Fiscal Year 1979 totaled $89,890. The following is a summary of those funds as expended during Fiscal Year 1979.

Full Time Equivalent Employees	4.0[1]
Salaries	$57,073.86
Employee Benefits	7,885.44
Contracted Services	3,498.50
Supplies	388.54
Printing	2,136.91
Telephone	2,072.03
Postage	768.67
Travel	643.71
Rent	2,840.25
Repair and Maintenance	356.08
Other-General	9.50
Equipment	12,214.27[2]
Total	$89,887.76[3]

[1]Includes the Commissioner, who is an appointed public official.

[2]Includes $11,000 accrued in FY79 to upgrade office equipment through the purchase of an Information Processor System. The accrued funds represent unexpended appropriations originally allocated under contracted services and travel for the field audit of campaign finance reports. The audits would have been conducted to verify accuracy and to determine compliance with the Montana Campaign Practices Act. However, because the appropriated funds proved inadequate at the requested contract rate of $22 to $25/hr., plus per diem, the audits were not contracted. Upon review of our budget with the Office of Budget and Program Planning in May of 1979, it was recommended that the unexpended balance be utilized to purchase the System in order to implement those statutory functions that the office has been unable, with its limited budget and personnel, to manually perform on an individual task basis--a situation which, when considering the appropriation for the 80-81 Biennium, would prevail in the forseeable future. The System was purchased with the approval of the Governor's Office of Budget and Program Planning and within the legislative appropriations for FY79 and the 80-81 Biennium equipment purchase budget.
It is estimated that the System will provide an out-put equivalent to 1 FTE at a salary and benefits savings of $8,000 annually that would be necessary to employ an additional FTE to manually perform the objectives; and, in addition, annual savings from purchase vs. lease will be approximately $4,500 through the technological/servicable life expectancy of 10-15 years.

[3]Unexpended balance of $2.24 reverted to general fund.

Staff

Pursuant to the provisions of section 13-37-112, MCA, and the 1977 legislative appropriation for personnel, a staff of 3 full-time equivalent employees (FTEs) were utilized to execute the operations of this office during Fiscal Year 1979.

The staff during the fiscal year consisted of the same three individuals who have been with the office since its outset:

> Karen A. Kelly, Helena - Administrative Assistant II, at a fiscal yearly salary of $11,523.
>
> Jack J. Lowe, Helena - Administrative Officer II, lawyer, at a fiscal yearly salary of $16,116.
>
> Arlene M. Sparrow, Helena - Clerk/Typist II, at a fiscal yearly salary of $8,106.

The office has been fortunate to retain these people, who, in the several years they have been with the office, have gained a considerable amount of expertise with regard to both the operations of the office itself and the realities of the election campaign process in Montana.

This last point is worth repeating, because many of the actions taken in the early days of the office were the result of a good understanding of the Campaign Practices Act but a relative unfamiliarity with the realities of the Montana political campaign process and the wishes and needs of the political community itself. Today it seems that there are ways to effectively administer the law with a minimum impact on the political process itself. Put another way, the office is attempting to detect and restrain real violations with a minimum bureaucratic impact on the conscientious candidates and committees. This is the sort of administration that can only be developed with experience, and the office is fortunate to have it.

Serious shortcomings in the office's performance with regard to

verification of information filed, audits and investigations to determine degree of compliance, and enforcement should be improved in the future. The 1979 Legislature authorized a FY 1980 budget which includes funds for another full-time employee. We expect that this employee, who will be hired in April 1980, will have an accounting background and will, in addition to general administrative duties, perform desk reviews and investigative field audits of filed reports. In the past, these tasks have largely been done through contracted services or not at all.

Contracted Services

It has been the nature of the Campaign Practices Act that the office's workload is desultory; that is, it comes in periodic onslaughts. This is so because of the periodic campaign finance reports which are due immediately before and after elections. The workload, therefore, increases greatly at times coinciding with the various school district, city, county, state district and statewide elections.

While the staff has never had any trouble keeping busy in the off-seasons, the campaign rush has always been difficult to keep up with, and we have expended funds for contracted services for purposes of immediate review of periodic campaign reports. This fiscal year was no exception, with the sum of $2,235.00 being paid to Richard M. Morgan, CPA, of Helena, Montana, for review work during the fall 1978 general election campaigns. Mr. Morgan has been involved with the Montana Campaign Finances and Practices Act since its passage and we were fortunate to be able to take advantage of his expertise, but the price was high. The additional FTE granted to the permanent staff by the 1979 Legislature will eliminate the need for this expenditure in future fiscal years.

Funds in the amount of $1,030.35 were paid to the law firm of Graybill, Warner, Ostrem & Crotty of Great Falls, Montana, for

services rendered in the case of C&C Plywood v. Hanson. Specifically, the money was used in the appeal of the case to the Ninth Circuit Court of Appeals. This affair is described in more detail on page 9.

Preparation of transcripts of public hearings conducted on the rules and regulations adopted, repealed, and amended by this office during Fiscal Year 1979 was contracted for $233.15 to H&H Secretarial of Helena, Montana.

ADMINISTRATIVE ACTION

Implementation

With the assistance of a Citizens Advisory Committee, every document and publication utilized by the office to implement the Campaign Practices Act was reviewed and rewritten. This included a complete revision of the forms and instructional manual used by candidates and committees required to file reports and statements with this office (publications directed by section 13-37-117, MCA.)

In addition, the administrative regulations were reviewed and rewritten. A careful study of the regulations, plus the incorporation of some of their provisions into revisions of the law itself, allowed us to considerably simplify and shorten the rules; infact, to actually repeal fifteen of them. The result is a body of rules which are as brief as possible and which are employed only where absolutely necessary. Although the promulgation of implementing regulations is authorized by statute (section 13-37-114, MCA), it may not be too ambitious to hope that someday we will be able to get along with no regulations at all.

Election Law Revision

Fiscal Year 1979 saw the first significant revisions to the Campaign Finances and Practices Act of 1975 and, perhaps, the first general and complete study and overhaul of the entire body of election laws in the state's history. The effort involved a lengthy study by this office and its Advisory Committee, resulting in numerous recommendations to the Montana Legislative Council and a legislative interim study committee on general election law revision. The resulting changes, most of which were contained in Senate No. Bill 65 (Chapter 571, Montana Session Laws 1979) are far too numerous to detail here. Major revisions directly affecting the Act, however, were:

--changing the method of appointment of the Commissioner in

order to preclude any challenge of the Commissioner's enforcement power on the basis of the Constitutional "separation of powers" provision. The appointment will now be made by the Governor with consent of the Senate, instead of by a committee of the Legislature (Chapter 483, Montana Session Laws 1979, House Bill No. 456).

--changing the penalties and method of enforcement from criminal to civil for many provisions of the Campaign Finances Act.

--rewriting Montana's provisions on corporate contributions to reflect court actions and changing conditions (Chapter 404, Montana Session Laws 1979, Senate Bill No. 395).

--eliminating the old provisions on "disclaimers," or statements of attribution on political campaign materials, which had mystified candidates for several generations, and replacing it with a new section which is clear and easily understandable. This may seem like a minor item, but the opaqueness of the prior provision has been a continual source of mistakes and complaints.

--enacting a revised schedule for the filing of reports by certain types of political committees, including political party committees, whose situations were ill-adapted to the pre- and post-election schedule originally contemplated by the Campaign Finances Act.

It is probably too much to hope that the revisions made in 1979 will be the complete answer to the questions surrounding the business of public disclosure of campaign finances and the regulation of campaign practices in Montana, but we do enjoy a genuine feeling of accomplishment in what was done. We were proud to be able to take part in the project and pleased that our suggestions were,

in most cases, incorporated into the final product.

Enforcement

The office has always operated on the assumption that enforcement (in the legal sense) is a less desirable option and should be employed only as a last resort. It is easier, cheaper, and generally more effective and productive of good public relations to educate concerned candidates and committees as to their obligations and to nip incipient violations in the bud. To this end, the office has begun to issue numerous memoranda to candidates and committees; and most of the more important provisions of the Campaign Finances and Practices Act are explained on the office's forms, where they are likely to catch the attention of those using them.

During Fiscal Year 1979 the office was faced with the usual and typical problem of trying to get candidates and committees to file reports on time. While failure to file timely reports was technically a misdemeanor, punishable under the criminal law, we felt that the public interest would be better served by the timely filing of reports than it would be by after-the-fact legal action.

To that end the two tools of (1) the administrative order of non-compliance and (2) witholding of certificates of election were used more effectively than they have been in the past. Within three working days after each deadline for the filing of election reports, Orders of Non-compliance were issued to those candidates and committees who had failed to file, and the fact was immediately publicized. This tactic prompted timely filing by all but 2 out of a total of 51 candidates and committees to whom Orders of Non-compliance were issued in Fiscal Year 1979. The result was that the overall percentage of timely filings was the best we have experienced. Aggravation was minimal (except perhaps to the slow filers) and cost to the taxpayers was next-to-nothing.

C&C Plywood v. Hanson, 583 F.2d 421 (9th Cir. 1978) resulted in the invalidation of Montana's former prohibition against corporate contributions to ballot-issue campaigns (former section 23-4744, R.C.M. 1947). The suit, filed against this office in September of 1976, resulted in a judgment for the plaintiffs by the United States District Court. That decision was subsequently appealed to the Ninth Circuit Court of Appeals, where its affirmance of the United States District Court's original invalidation of the statute was foreshadowed by a decision of the United States Supreme Court in a similar Massachusetts case.[3] The case involved substantially identical issues to those raised in Montana and was decided by the United States Supreme Court[4] in the interim between the District Court and Appeals Court phase of our case. The invalidation of the Massachusetts statute meant that the result was inevitable.

The conduct of this case required a substantial investment in the office's time and resources, and the cost to the taxpayers was considerable. We felt that the effort was worth it, in view of the importance of the issues involved. The fact that the decision in the United States Supreme Court on the Massachusetts case was five-to-four demonstrates that the question was a close one.

State v. Matthews. Following the 1978 general election, a prosecution was commenced against a Missoula county candidate for making out-of-pocket campaign expenditures. The actions of the defendant represented the most blatant disregard for the Campaign Finances and Practices Act that this office has experienced to date, despite numerous contacts with the candidate to inform him of the

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[3]First National Bank of Boston v. Belotti, 435 U.S. 765 (1978).

[4]This office, together with the Montana Attorney General, filed a friend-of-the-court brief in the Belotti case.

Act's requirement. The case was, however, dismissed in the district court on a technicality of criminal procedure. An appeal of the dismissal is pending[5].

[5]Docket No. 14776, Montana Supreme Court.

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